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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,820	08/20/2008	John Vivian Woodley	A-10084	7403
20741	7590	04/28/2011	EXAMINER	
Welsh Flaxman & Gitler 2000 Duke Street, Suite 100 Alexandria, VA 22314				WEBB, SARAH K
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
04/28/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/580,820	WOODLEY, JOHN VIVIAN	
	Examiner	Art Unit	
	SARAH WEBB	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 March 2011.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-7,9 and 11 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,5-7,9 and 11 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/13/2010</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

2. The information disclosure statement filed 12/13/2010 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. Although an English abstract or explanation of JP 63-166235 was not provided with the IDS, the Examiner has obtained an English translation of this document, which attached to this office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-7, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 63-166235 (Fujihara) in view of US Patent No. 3,279,468 (Le Vine).

Fujihara discloses a mask for securing to a person's face that includes a plurality of on-compressible, non-conductive passive pressure points (1) on the skin contacting surface of the mask. The mask includes two eye apertures (2) and regions for covering the wearer's nose and cheekbones. The plurality of pressure points (1) are located in clusters below and between the eye apertures (2). As shown in Figure 2, the pressure points have a rounded, skin contacting surface.

Regarding claims 1 and 5, Fujihara fails to configure the pressure points (1) to be selectively removable and attachable to the mask through plurality of open apertures located at known pressure points, but Fujihara does disclose another plurality of pressure points (5) (see Figure 3) that are selectively inserted into apertures (3). Le Vine discloses a therapeutic mask with pressure points (33) that are selectively removable and attachable to the mask through apertures (39) that are arranged in groups near known acupressure points. This arrangement provides a means for adjusting the position of the pressures points to accommodate variations in the faces of different wearers (column 9, lines 33-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Fujihara device so that all of the pressure points are selectively removable and attachable to the mask through groups of apertures, as taught by Le Vine, in order to provide an acupressure device that is capable of being adjusted to an individual's face.

Regarding claims 3 and 7, the term "moulded" is a product-by-process limitation that is not given full patentable weight. The process by which an article is made is not germane to the issue of patentability of the device itself.

Regarding claim 5, both Fujihara and LeVine disclose at least three different groups of apertures corresponding to three different pressure points. Regarding claim 11, these apertures groups are located between the eye apertures along the nose bridge and below each eye aperture.

Regarding claim 6, both Fujihara and LeVine disclose mounting portions extending from the rear of the pressure points.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH WEBB whose telephone number is (571) 272-5749. The examiner can normally be reached on 9:00am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. W./
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
4/21/11